Supreme Court, U. S.
FILED
APR 29 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT

of the

UNITED STATES

OCTOBER TERM, A. D. 1977

NO. 76-1506

BRADLEY EUGENE SMITH,
Petitioner,

V.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FOURTH DISTRICT

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FOURTH DISTRICT

I.

OPINION BELOW

The opinion of the Appellate Court of Illinois, Fourth District, dated September 30, 1976, is unreported, but attached hereto as Appendix A.

The order of the Appellate Court of Illinois, Fourth District, denying rehearing, dated November 8, 1976, is also unreported, but attached hereto as Appendix B.

The order of the Supreme Court of Illinois denying the Petition for Leave to Appeal, entered January 28, 1977, is also unreported, but attached hereto as Appendix C.

II.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3), and this petition is being filed within ninety days of the final order of the State Court as required by rule.

III.

QUESTION PRESENTED FOR REVIEW

Whether a non-indigent defendant in a criminal case is denied his right to counsel pursuant to Amendment VI to the Constitution of the United States by the order of a State Court denying the substitution of his retained attorney for counsel theretofore appointed by the Court.

IV.

RELEVANT PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES

Amendment VI

In all criminal prosecutions the accused shall enjoy the

right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

V.

STATEMENT OF THE CASE

On March 10, 1975, the State's Attorney of Pike County, Illinois, filed a complaint against Bradley Eugene Smith alleging that he had violated the terms of his probation in the State of Texas. (C-3)

On the same day counsel was appointed to represent the Defendant who was, at that time, unable to secure his own counsel. (C-10)

On March 20, 1975, the Defendant posted a Two Thousand Dollar ($2,000.00) cash bond and was released. (C-12)

On April 14, 1975, the Defendant advised his court appointed counsel that he had retained private counsel and that he wanted appointed counsel to withdraw at the first available opportunity so that private counsel could enter his appearance. Appointed counsel advised the prosecution on April 14, that he would file a motion to withdraw on April 16, the date set for the hearing on Defendant's Habeas Corpus petition.

On April 16, 1975, the Defendant's appointed counsel filed a motion to withdraw representing to the court that the Defendant had contacted an attorney of his own choice and that the attorney had told appointed counsel that he was ready to enter the case. (C-19) The prosecution objected, the motion to withdraw was denied and a hearing on Defendant's habeas corpus petition was held immediately thereafter. (R-17-23) The petition was denied and Defendant was ordered remanded to the custody of the authorities of the demanding

state. (R-25-26)

The trial court continued the bond pending appeal, found the Defendant not to be an indigent person, and allowed appointed counsel to withdraw. (R-27-29)

The Defendant thereafter unsuccessfully raised the question of the denial of his right to counsel in the Appellate Court of Illinois for the Fourth District. He then filed a petition for rehearing and upon its denial, a petition for leave to appeal to the Illinois Supreme Court was filed, which was subsequently denied. (See I. above and Appendixes "A", "B" and "C".)

VI.

REASONS FOR ALLOWING THE WRIT

Your Honors are asked to rule upon the propriety, pursuant to the guarantees of the Sixth Amendment to the Constitution of the United States, of a decision by a state Appellate Court that a defendant in a criminal case can be denied representation by counsel of his own choice, without a showing by the State that honoring such request would in any way impede the proceedings.

The Summary Order of the Appellate Court of Illinois, Fourth District, which is appended hereto, does not adequately set forth the facts of this case. That Court allowed the parties to proceed without the filing of abstracts or excerpts.

#1. The "C" reference is to the Common Law Record in the State proceedings and the "R" reference is to the Report of Proceedings in the State proceedings.

The following is a brief statement of the relevant facts in this case with reference to the original Record on Appeal.

On March 10, 1975, the State's Attorney of Pike County, Illinois, filed a complaint against the Defendant alleging that he had violated the terms of his probation in the State of Texas. (C-3)

On the same day counsel was appointed to represent the Defendant who was, at that time, unable to secure his own counsel. (C-10)

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The trial court continued the bond pending appeal, found the Defendant not to be an indigent person, and allowed appointed counsel to withdraw. (R-27-29)

There can be no doubt that one of the most important Federal Constitutional rights enjoyed by any person involved in any litigation is the right to counsel. In criminal cases this Court has repeatedly emphasized the importance of providing the indigent defendant with the services of a public defender or other court appointed counsel. This Court has also recognized the importance of allowing the more affluent defendant in a criminal case to select an attorney of his own choice.

In *U.S. v. Wisniewski, 478 F.2d 274 (1973)* the Court of Appeals for the Second Circuit of Illinois, although rejecting appellant's claims with regard to a conflict of interest, did not, ". . . *disparage the importance of defendant's right to be represented by counsel possessing zealous and undivided regard for his client's interests.*" The Court also noted that, " . . .*defendants who retain counsel also have a right of constitutional dimension to representation by counsel of their own choice. . . .*"

In *U.S. v. Seale, 461 F. 2d 345 (1972)* the Court of Appeals for the Seventh Circuit held, with regard to the Appellant's claim that he had been denied counsel of his own choice:

> *The Government has cited no authority to show that a trial judge may eschew*

inquiry into the objections of a defendant who unexpectedly finds himself without chosen trial counsel. [23] If the Sixth Amendment right to the effective assistance of counsel means anything, it certainly means that it is the actual choice of the defendant which deserves consideration. This is not to say that Seale was unequivocally entitled to a continuance until Garry could be present. But if an inquiry disclosed that this defendant had never consented to be represented at trial by the other record attorneys in Garry's absence, was unwilling to proceed with any counsel except Garry and was sincere in his position, other alternatives were available to the trial court. The grant of severance and a reasonable continuance to secure substitute counsel or leave to Seale to represent himself would have permitted the trial to continue promptly and may well have obviated many of the difficulties that later occurred."

The Defendant in this case was not an indigent person at the time he retained his own counsel and asked his appointed counsel to withdraw. He

desired to proceed with his retained attorney and the court refused to permit him to do so. The denial of Defendant's petition for habeas corpus must be reversed and the Defendant discharged.

VII.

CONCLUSION

Wherefore, Petitioner, Bradley Eugene Smith, respectfully requests that a Writ of Certiorari issue to the Appellate Court of Illinois, Fourth District.

Respectfully submitted,

ROBERT WEINER
1227 South Seventh Street
Post Office Box 399
Springfield, Illinois 62705

Attorney for Petitioner.

APPENDIX A

ILLINOIS APPELLATE COURT ORDER

General No. 13422 Agenda No. 76-176

Pursuant to the authority granted by Supreme Court Rule 23 (58 Ill. 2d R23), this court finds that the appeal presents no substantial question and that an opinion would have no precedential value.

The circuit court of Pike County denied the defendant's petition for writ of habeas corpus and ordered that he be extradicted to the State of Texas. This appeal is from the denial of the writ. Two issued are presented upon this appeal: (1) whether the trial court erred in denying the motion to withdraw by the defendant's court-appointed counsel, and (2) whether the trial court erroneously failed to consider the sufficiency of the documents upon which the governor's rendition warrant was based.

In this case, the defendant had counsel appointed for him by the trial court, and the day that the matter was set for hearing and following some earlier continuances, the defendant sought to have another attorney appointed. In this case, the defendant asserted he would have other counsel. He gave no reason for other counsel's absence from the scheduled hearing and no compelling reason for the chronology of his motion to substitute counsel. We find neither an abuse of discretion nor a denial of the right to counsel.

As to the defendant's issue that the trial court erroneiously failed to consider the suffic-

iency of the supporting documents, we note that our supreme court has consistently held that the production of a governor's extradition warrant makes out a prima facie case sufficient to justify extradition of the defendant and can only be overcome by proof to the contrary. *People v. Woods (1968) 39 Ill. 2d 381, 235 N. E. 2d 601; People v. Oglivie (1966) 35 Ill. 2d 287, 220 N. E. 2d 172; People v. Williams (1964) 31 Ill. 2d 160, 201 N. E. 2d 117.)* The judgment of the circuit court of Pike County is affirmed.

JUDGMENT AFFIRMED.

/s/ James C. Cravens
/s/ Leland Simkins
/s/ Frederick S. Green

APPENDIX B

General No. 13422

The Court today denied the Petition for Rehearing in the above entitled cause.

The mandate of this Court will issue in 7 days to the Clerk of the Circuit Court unless in that period an affidavit of intent to seek review in the Supreme Court (Rule 368 (b)) is filed in this Court.

/s/ Robert L. Conn
Clerk, Appellate Court
Fourth District

APPENDIX C

ORDER OF SUPREME COURT OF ILLINOIS

No. 49066

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

/s/ Clell L. Woods
Clerk of the Supreme
Court.